



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2013-0690; FRL- 9910-36-Region-3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia's Redesignation Request and the Associated Maintenance Plan of the West Virginia Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State of West Virginia's request to redesignate to attainment the West Virginia portion of the Martinsburg-Hagerstown, WV-MD nonattainment area (Martinsburg Area or Area) for the 1997 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). EPA is also proposing to determine that the Martinsburg Area continues to attain the 1997 annual PM_{2.5} NAAQS. In addition, EPA is proposing to approve as a revision to the West Virginia State Implementation Plan (SIP), the associated maintenance plan to show maintenance of the 1997 annual PM_{2.5} NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 PM_{2.5} and nitrogen oxides (NO_x) mobile vehicle emissions budgets (MVEBs) for Berkeley County, West Virginia for the 1997 annual PM_{2.5} NAAQS which EPA is proposing to approve for transportation conformity purposes. Furthermore, EPA is proposing to approve as a revision to the West Virginia SIP, the 2007 base year emissions inventory for the Area for the 1997 annual PM_{2.5} NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2013-0690 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2013-0690, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2013-0690. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 24304.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

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I. Background

The first air quality standards for PM_{2.5} were established on July 18, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m³), based on a three-year average of annual mean PM_{2.5} concentrations (the 1997 annual PM_{2.5} standard). In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m³ based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944, 1014), EPA published air quality area designations for the 1997 PM_{2.5} NAAQS. In that rulemaking action, EPA designated the Martinsburg Area as

nonattainment for the 1997 annual PM_{2.5} NAAQS. The Martinsburg Area is comprised of Berkeley County in West Virginia (the West Virginia portion of the Area) and Washington County in Maryland. *See* 40 CFR 81.321 (Maryland) and 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 µg/m³ but revised the 24-hour standard to 35 µg/m³, based again on the three-year average of the 98th percentile of the 24-hour concentrations (the 2006 annual PM_{2.5} standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour PM_{2.5} standard, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Martinsburg Area as attainment for the 2006 24-hour PM_{2.5} NAAQS. *See* 74 FR 58737 and 40 CFR 81.321 (Maryland) and also *see* 74 FR 58775 and 40 CFR 81.349 (West Virginia).

In response to legal challenges of the annual standard promulgated in 2006, the D.C. Circuit Court remanded the 2006 annual standard to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et. al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 annual and the 2006 annual PM_{2.5} standards are essentially identical, attainment of the 1997 annual PM_{2.5} standard would also indicate attainment of the remanded 2006 annual PM_{2.5} standard. Since the Martinsburg Area is designated nonattainment for the annual NAAQS promulgated in 1997, today's proposed rulemaking action addresses the redesignation to attainment only for this standard.

On November 20, 2009 (74 FR 60199), EPA determined that the Martinsburg Area had attained the 1997 annual PM_{2.5} NAAQS. Pursuant to 40 CFR 51.1004(c) and based on this determination, the requirements for the Martinsburg Area to submit an attainment demonstration

and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIP revisions related to the attainment of the 1997 annual PM_{2.5} NAAQS were suspended until such time as: (1) The Area is redesignated to attainment for the standard, at which time the requirements no longer apply; or (2) EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted. On January 20, 2012 (77 FR 1411), EPA also determined that the Martinsburg Area had attained the 1997 annual PM_{2.5} NAAQS by the applicable date of April 5, 2010.

On August 5, 2013, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) formally submitted a request to redesignate the West Virginia portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. Concurrently, WVDEP submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The maintenance plan also includes a 2007 base year emissions inventory for PM_{2.5}, NO_x, sulfur dioxide (SO₂), volatile organic compounds (VOC) and ammonia (NH₃) for the 1997 annual PM_{2.5} NAAQS in order to meet the emissions inventory requirement of section 172(c)(3) of the CAA. In addition, the maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs used for transportation conformity purposes for Berkeley County, West Virginia for the 1997 annual PM_{2.5} NAAQS.

In this proposed rulemaking action, EPA takes into account two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit Court). In the first of the two D.C. Circuit Court decisions, the D.C. Circuit Court, on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded the Cross-

State Air Pollution Control Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) “pending . . . development of a valid replacement.” *EME Homer City* at 38. The D.C. Circuit Court denied all petitions for rehearing on January 24, 2013. EPA and other parties filed for certiorari to the Supreme Court, and on June 24, 2013, the Supreme Court granted certiorari on EPA’s petition for appeal of *EME Homer City Generation*. See *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 570 U.S. --- (2013). Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion. In the second decision, on January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the D.C. Circuit Court remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

II. EPA’s Requirements

A. Criteria for Redesignation to Attainment

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of

section 175A of the CAA; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Each of these requirements are discussed in section V. of today's proposed rulemaking action.

EPA has provided guidance on redesignation in the "SIPs; General Preamble for the Implementation of Title I of the CAA Amendments of 1990," (57 FR 13498, April 16, 1992) (the "General Preamble") and has provided further guidance on processing redesignation requests in the following documents: (1) "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "1992 Calcagni Memorandum"); (2) "SIP Actions Submitted in Response to CAA Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and (3) "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A of the CAA, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS

violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future PM_{2.5} violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment areas and for areas seeking redesignation to attainment for a given NAAQS. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on onroad mobile source emissions for the relevant criteria pollutants and/or their precursors, where appropriate, to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to onroad vehicle use that, together with emissions from all other sources in the area, will provide attainment, RFP, or maintenance, as applicable. The budget serves as a ceiling on emissions from an area's planned transportation system. Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan.

The maintenance plan for the West Virginia portion of the Martinsburg Area, that comprises Berkeley County in West Virginia, includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs for transportation conformity purposes. The transportation conformity determination for the Area is further discussed in section V.C. of today's proposed rulemaking action and a technical support document (TSD) dated January 28, 2014, available on line at www.regulations.gov, Docket ID No. EPA-OAR-R03-2013-0690.

III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the West Virginia portion of the Martinsburg Area to attainment for the 1997 annual PM_{2.5} NAAQS. EPA is proposing to find that the Area meets the requirements for redesignation for the 1997 annual PM_{2.5} NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve West Virginia's request to change the legal definition for the West Virginia portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. This action does not impact the legal definition of the Maryland portion of the Area. EPA is taking separate action to redesignate the Maryland portion.

EPA is also proposing to approve the associated maintenance plan for the West Virginia portion of the Martinsburg Area as a revision to the West Virginia SIP for the 1997 annual PM_{2.5} NAAQS, including the 2017 and 2025 PM_{2.5} and NO_x MVEBs of the Area. The approval of the maintenance plan is one of the CAA criteria for redesignation of the Area to attainment for the 1997 annual PM_{2.5} NAAQS. West Virginia's maintenance plan is designed to ensure continued attainment in the West Virginia portion of the Martinsburg Area for 10 years after redesignation for the 1997 annual PM_{2.5} NAAQS.

EPA previously determined that the Martinsburg Area has attained the 1997 annual PM_{2.5} NAAQS. Therefore, EPA is proposing to find that the Area continues to attain the standard. *See* 74 FR 60199, November 20, 2009 and 77 FR 1411, January 10, 2012. EPA is also proposing to approve the 2007 comprehensive emissions inventory that includes PM_{2.5}, SO₂, NO_x, VOC, and NH₃ for the West Virginia portion of the Area as a revision to the West Virginia SIP for the 1997 annual PM_{2.5} NAAQS in order to meet the requirements of section 172(c)(3) of the CAA. EPA's analysis of the proposed actions is provided in section V. of today's proposed rulemaking action.

IV. Effects of Recent Court Decisions on Proposed Actions

A. Effect of the August 21, 2012 D.C. Circuit Court Decision Regarding EPA's CSAPR

1. Background

EPA promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. *See* 76 FR 59517. CAIR requires significant reductions in emissions of SO₂ and NO_x from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the D.C. Circuit Court issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the D.C. Circuit Court stayed CSAPR pending resolution of the

petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The D.C. Circuit Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38 (D.C. Circ. 2012). The D.C. Circuit Court denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013 the Supreme Court granted EPA’s petition for certiorari. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

2. Proposal on This Issue

In light of these unique circumstances and for the reasons explained subsequently, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of sections 107(d)(3)(E)(iii) and 175A of the CAA. EPA, therefore, proposes to approve the redesignation request and the related SIP revisions for the West Virginia portion of the Martinsburg Area (Berkeley County, West Virginia), including West Virginia’s plan for maintaining attainment of the 1997 annual PM_{2.5} NAAQS in the Area.

As directed by the D.C. Circuit Court, CAIR remains in place and enforceable until substituted by a valid replacement rule. West Virginia’s SIP revision lists CAIR as a control measure that

was approved by EPA on August 6, 2009 (74 FR 38536) and became state-effective on May 1, 2008 for the purpose of reducing SO₂ and NO_x emissions. CAIR was thus in place and getting emission reductions when the Martinsburg Area monitored attainment of the 1997 annual PM_{2.5} NAAQS. The quality-assured, quality-controlled, certified monitoring data used to demonstrate the Area's attainment of the 1997 annual PM_{2.5} NAAQS was also impacted by CAIR.

To the extent that West Virginia is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit Court in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the D.C. Circuit Court to develop a new rule to address interstate transport to replace CSAPR, and the opinion makes clear that after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until: (1) EPA has promulgated a final rule through a notice-and-comment rulemaking process; (2) states have had an opportunity to draft and submit SIPs; (3) EPA has reviewed the SIPs to determine if they can be approved; and (4) EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. The D.C. Circuit Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop. By definition, any rule that replaces CAIR and meets the D.C. Circuit Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C.

Circuit Court emphasized that the consequences of vacating CAIR “might be more severe now in light of the reliance interests accumulated over the intervening four years.” *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the D.C. Circuit Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIP revisions as appropriate to identify whether there are any issues that need to be addressed.

B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding PM_{2.5}

Implementation under Subpart 4 of Part D of Title I of the CAA

1. Background

On January 4, 2013, in *NRDC v. EPA*, the D.C. Circuit Court remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the NSR Program for PM_{2.5}” final rule (73 FR 28321, May 16, 2008) (collectively, “1997 PM_{2.5} Implementation Rule”). 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit Court found that EPA erred in implementing the 1997 annual PM_{2.5} NAAQS pursuant to the general

implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4).

Prior to the January 4, 2013 decision, the states had worked towards meeting the air quality goals of the 1997 PM_{2.5} NAAQS in accordance with EPA regulations and guidance derived from subpart 1 of Part D of Title I of the CAA. Subsequent to this decision, EPA took this history into account and responded to the D.C. Circuit Court's remand by proposing to set a new deadline for any remaining submissions that may be required for a moderate nonattainment area that are due to the applicability of subpart 4 of Part D of Title I of the CAA.

On November 21, 2013 (78 FR 69806), EPA issued a proposed rule, Identification of Nonattainment Classification and Deadlines for Submission of SIP Provisions for the 1997 PM_{2.5} NAAQS (the PM_{2.5} Subpart 4 Classification and Deadline Rule) identifying the classification under subpart 4 for areas currently designated nonattainment for the 1997 PM_{2.5} standards, the deadlines for states to submit NSR and attainment-related SIP elements required for these areas pursuant to subpart 4, and the EPA guidance that is currently available regarding subpart 4 requirements. If finalized, this rule will set a deadline for states to submit attainment plans and meet other subpart 4 requirements. The proposed rule identified December 31, 2014 as the deadline for the states to submit any additional attainment-related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 PM_{2.5} NAAQS and to submit SIPs addressing the nonattainment NSR requirements in subpart 4. Since West Virginia submitted a request to redesignate the West Virginia portion of the Martinsburg Area from nonattainment to attainment on August 5, 2013

and the proposed PM_{2.5} Subpart 4 Classification and Deadline Rule identifies a December 31, 2014 deadline, West Virginia is not required at this time to meet the applicable requirements of subpart 4.

2. Proposal on This Issue

EPA is proposing to determine that the D.C. Circuit Court's January 4, 2013 decision does not prevent EPA from redesignating the West Virginia portion of the Martinsburg Area to attainment for the 1997 annual PM_{2.5} NAAQS. Even in light of the D.C. Circuit Court's decision, redesignation for this Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the West Virginia redesignation request and disregards the provisions of its 1997 PM_{2.5} Implementation Rule recently remanded by the D.C. Circuit Court, the State's request for redesignation of the Area still qualifies for approval. EPA's discussion takes into account the effect of the D.C. Circuit Court's ruling and EPA's proposed PM_{2.5} Subpart 4 Classification and Deadline Rule on the Area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 PM_{2.5} Implementation Rule, the D.C. Circuit Court's January 4, 2013 ruling rejected EPA's reasons for implementing the PM_{2.5} NAAQS solely in accordance with the

provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 annual PM_{2.5} NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating West Virginia's redesignation request for the West Virginia portion of the Martinsburg Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of section 107(d)(3)(E) of the CAA, and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the West Virginia portion of the Martinsburg Area. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* 1992 Calcagni Memorandum. *See also* "SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465-66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424-27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at

the time of attainment”).¹ In this case, at the time that West Virginia submitted its redesignation request for the 1997 PM_{2.5} NAAQS, the requirements under subpart 4 were not due.

EPA’s view that, for purposes of evaluating the redesignation of the West Virginia portion of the Martinsburg Area, the subpart 4 requirements were not due at the time West Virginia submitted the redesignation request is in keeping with the EPA’s interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court’s decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that “applicable requirements,” for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.*, Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those rulemaking actions, EPA therefore, did not consider subpart 2 requirements to be “applicable” for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E) of the CAA.

¹ Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

EPA's interpretation derives from the provisions of section 107(d)(3) of the CAA. Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D." Section 107(d)(3)(E)(ii) provides that EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request.

First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary

for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA* and EPA's November 21, 2013 proposed PM_{2.5} Subpart 4 Classification and Deadline Rule, compound the consequences of imposing requirements that come due after the redesignation request is submitted. West Virginia submitted its redesignation request for the 1997 annual PM_{2.5} NAAQS on August 5, 2013 for the West Virginia portion of the Martinsburg Area, which is prior to the deadline by which the Area is required to meet the applicable requirements pursuant to subpart 4.

To require West Virginia's fully-completed and pending redesignation request for the 1997 annual PM_{2.5} NAAQS to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only in January 2013 and for which the deadline to comply has not yet come, would be to give retroactive effect to such requirements and provide West Virginia a unique and earlier deadline for compliance solely on the basis of submitting a redesignation request for the West Virginia portion of the Martinsburg Area. The D.C. Circuit Court recognized the inequity of this

type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),² where it upheld the D.C. Circuit Court’s ruling refusing to make retroactive EPA’s determination that the Area did not meet its attainment deadline. In that case, petitioners urged the D.C. Circuit Court to make EPA’s nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it “would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.” *Id.* at 68. Similarly, it would be unreasonable to penalize the State of West Virginia by rejecting its redesignation request for an area that is already attaining the 1997 annual PM_{2.5} NAAQS and that met all applicable requirements known to be in effect at the time of the requests. For EPA now to reject the redesignation request solely because West Virginia did not expressly address subpart 4 requirements which have not yet come due and for which it had little to no notice, would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club v. Whitman*.

b. Subpart 4 Requirements and West Virginia Redesignation Request

Even if EPA were to take the view that the D.C. Circuit Court’s January 4, 2013 decision requires that, in the context of pending redesignations for the 1997 annual PM_{2.5} NAAQS, subpart 4 requirements were due and in effect at the time West Virginia submitted its

² *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass’n v. EPA*. 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

redesignation request, EPA proposes to determine that the West Virginia portion of the Martinsburg Area still qualifies for redesignation to attainment for the 1997 annual PM_{2.5} NAAQS. As explained subsequently, EPA believes that the redesignation request for the West Virginia portion of the Martinsburg Area, though not expressed in terms of subpart 4 requirements, substantively meet the requirements of that subpart for purposes of redesignating the Area to attainment for the 1997 annual PM_{2.5} NAAQS.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the West Virginia portion of the Martinsburg Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM₁₀)³ nonattainment areas, and under the D.C. Circuit Court’s January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM_{2.5} nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent “subsumed by, or integrally related to, the more specific PM₁₀ requirements” (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

³ PM₁₀ refers to particulates nominally 10 micrometers in diameter or smaller.

For the purposes of this redesignation request, in order to identify any additional requirements which would apply under subpart 4, consistent with EPA's November 21, 2013 proposed PM_{2.5} Subpart 4 Classification and Deadline Rule, EPA is considering the Martinsburg Area to be a "moderate" PM_{2.5} nonattainment area. As EPA explained in its November 21, 2013 proposed rule, section 188 of the CAA provides that all areas designated nonattainment areas under subpart 4 are initially classified by operation of law as "moderate" nonattainment areas, and remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM₁₀, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.⁴ In any event, in the context of redesignation, EPA has long relied on the

⁴The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed in this rulemaking action.

interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, “Part D NSR Requirements for Areas Requesting Redesignation to Attainment.” *See also* rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,⁵ when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM_{2.5} NAAQS is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that: “The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.”

The General Preamble also explained that: “[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when

⁵ I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.” *Id.* EPA similarly stated in its 1992 Calcagni Memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that even if we were to consider the D.C. Circuit Court’s January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively⁶ or prior to December 13, 2014 and thus, were due prior to West Virginia’s redesignation request, those requirements do not apply to an area that is attaining the 1997 annual PM_{2.5} NAAQS, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA’s authority to interpret “applicable requirements” in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA

⁶ As EPA has explained above, we do not believe that the D.C. Circuit Court’s January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

determines are attaining the 1997 annual PM_{2.5} NAAQS. EPA's prior "Clean Data Policy" rulemakings for the PM₁₀ NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). *See also* Coso Junction Proposed PM₁₀ Redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS. Elsewhere in this notice, EPA determined that the Martinsburg Area has attained the 1997 annual PM_{2.5} NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the West Virginia portion of the Area meets the attainment-related plan requirements of subparts 1 and 4 for the 1997 annual PM_{2.5} NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating this redesignation request.

c. Subpart 4 and Control of PM_{2.5} Precursors

The D.C. Circuit Court in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the D.C. Circuit Court's opinion with respect to PM_{2.5} precursors. While

past implementation of subpart 4 for PM₁₀ has allowed for control of PM₁₀ precursors such as NO_x from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM₁₀ shall also apply to PM₁₀ precursors from those sources, except where EPA determines that major stationary sources of such precursors “do not contribute significantly to PM₁₀ levels which exceed the standard in the area.” EPA’s 1997 PM_{2.5} Implementation Rule, remanded by the D.C. Circuit Court, contained rebuttable presumptions concerning certain PM_{2.5} precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was “not required to address VOC [and NH₃] as . . . PM_{2.5} attainment plan precursor[s] and to evaluate sources of VOC [and NH₃] emissions in the State for control measures.” EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM_{2.5} concentrations. EPA also left open the possibility for such regulation of VOC and NH₃ in specific areas where that was necessary.

The D.C. Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, “In light of our disposition, we need not address the petitioners’ challenge to the presumptions in [40 CFR 51.1002] that VOCs and NH₃ are not PM_{2.5} precursors, as subpart 4 expressly governs precursor presumptions.” *NRDC v. EPA*, at 27, n.10.

Elsewhere in the D.C. Circuit Court’s opinion, however, the D.C. Circuit Court observed: “NH₃ is a precursor to fine particulate matter, making it a precursor to both PM_{2.5} and PM₁₀. For a PM₁₀ nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. 7513a(e) [section 189(e)].” *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the West Virginia portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS are consistent with the D.C. Circuit Court’s decision on this aspect of subpart 4. First, while the D.C. Circuit Court, citing section 189(e), stated that “for a PM₁₀ area governed by subpart 4, a precursor is ‘presumptively’ regulated,” the D.C. Circuit Court expressly declined to decide the specific challenge to EPA’s 1997 PM_{2.5} Implementation Rule provisions regarding NH₃ and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM_{2.5} nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the 1997 PM_{2.5} Implementation Rule’s rebuttable presumptions regarding NH₃ and VOC as PM_{2.5} precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the Area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the West Virginia portion of the Martinsburg Area, EPA believes that doing so is consistent with proposing redesignation of the West Virginia portion of the Area for the 1997 annual PM_{2.5} NAAQS. The West Virginia portion of the Area

has attained the 1997 annual PM_{2.5} NAAQS without any specific additional controls of NH₃ and VOC and emissions from any sources in the Area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM₁₀ precursors.⁷ Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM_{2.5} precursors were subject to regulation, with the exception of NH₃ and VOC. Thus we must address here whether additional controls of NH₃ and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Area for the 1997 annual PM_{2.5} NAAQS. As explained subsequently, we do not believe that any additional controls of NH₃ and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538-13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this rulemaking action, proposes to determine that West Virginia's SIP has met the provisions of section 189(e) with respect to NH₃ and VOC as precursors. This proposed determination is based on our findings that: (1) The Martinsburg Area contains no major stationary sources of

⁷ Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

NH₃, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.⁸ In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the West Virginia portion of the Martinsburg Area, which is attaining the 1997 annual PM_{2.5} NAAQS, at present NH₃ and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual PM_{2.5} NAAQS in the Area. *See* 57 FR 13539-42.

EPA notes that its 1997 PM_{2.5} Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM_{2.5} precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual PM_{2.5} NAAQS. By contrast, redesignation to attainment primarily requires the nonattainment area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the D.C. Circuit Court's January 4, 2013 decision as calling for "presumptive regulation" of NH₃ and VOC for PM_{2.5} under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring West Virginia to address precursors differently than it has already would result in a substantively different outcome.

⁸ The Martinsburg Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology (RACT) regulations and various on-road and non-road motor vehicle control programs.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM₁₀ contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.⁹ Courts have upheld this approach to the requirements of subpart 4 for PM₁₀.¹⁰ EPA believes that application of this approach to PM_{2.5} precursors under subpart 4 is reasonable. Because the Martinsburg Area has already attained the 1997 annual PM_{2.5} NAAQS with its current approach to regulation of PM_{2.5} precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of West Virginia's request for redesignation of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS. In the context of a redesignation, the Area has shown that it has attained the standards. Moreover, West Virginia has shown and EPA has proposed to determine that attainment of the 1997 annual PM_{2.5} NAAQS in this Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standards. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as

⁹ See, e.g., "Approval and Promulgation of Implementation Plans for California – San Joaquin Valley PM₁₀ Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM₁₀ Standards," (69 FR 30006, May 26, 2004) (approving a PM₁₀ attainment plan that impose controls on direct PM₁₀ and NO_x emissions and did not impose controls on SO₂, VOC, or NH₃ emissions).

¹⁰ See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

precluding redesignation of the West Virginia portion of the Martinsburg Area to attainment for the 1997 annual PM_{2.5} NAAQS at this time.

In summary, even if, prior to the date of the redesignation request submittal, West Virginia was required to address precursors for the Martinsburg Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 PM_{2.5} Implementation Rule, EPA would still conclude that the West Virginia portion of the Martinsburg Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v) of the CAA.

V. EPA's Analysis of West Virginia's SIP Submittal

EPA is proposing several rulemaking actions for the West Virginia portion of the Martinsburg Area: (1) To redesignate the Area to attainment for the 1997 annual PM_{2.5} NAAQS; (2) to approve into the West Virginia SIP, the associated maintenance plan for the 1997 annual PM_{2.5} NAAQS; and (3) to approve the 2007 comprehensive emissions inventory into the West Virginia SIP to satisfy section 172(c)(3) of the CAA requirement for the Area, one of the criteria for redesignation. EPA's proposed approvals of the redesignation request and maintenance plan for the 1997 annual PM_{2.5} NAAQS are based upon EPA's determination that the Area continues to attain the 1997 annual PM_{2.5} NAAQS, which EPA is proposing in this rulemaking action, and that all other redesignation criteria have been met for the West Virginia portion of the Area. In addition, EPA is proposing to approve the 2017 and 2025 MVEBs for Berkeley County, West Virginia for transportation conformity purposes. The following is a description of how the West Virginia's August 5, 2013 submittal satisfies the requirements of section 107(d)(3)(E) of the

CAA for the 1997 annual PM_{2.5} NAAQS.

A. Redesignation Request

1. Attainment

As noted previously, in the final rulemaking action dated January 10, 2012 (77 FR 1411), EPA determined that the entire Martinsburg Area had attained the 1997 annual PM_{2.5} NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007-2009 showing that the Area had attained the 1997 annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. On November 20, 2009 (74 FR 60199), EPA determined that the Martinsburg Area had clean data for the 1997 annual PM_{2.5} NAAQS. The determination was based upon complete, quality assured, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS based on the 2006-2008 data and data available to date for 2012 in EPA's Air Quality System (AQS) database. Further discussion of pertinent air quality issues underlying this determination was provided in the notice of proposed rulemaking for EPA's determination of attainment for this Area, published on September 29, 2009 (74 FR 49833) for the 1997 annual PM_{2.5} NAAQS.

EPA has reviewed the ambient air quality PM_{2.5} monitoring data in the Martinsburg Area consistent with the requirements contained at 40 CFR part 50, and recorded in EPA's AQS database. To support the previous determinations of attainment of the Area, EPA has also reviewed more recent data in its AQS database, including certified, quality-assured data for the period from 2008-2010, 2009-2011 and 2010-2012. This data, shown in Table 1, shows that the

Martinsburg Area continues to attain the 1997 annual PM_{2.5} NAAQS. In addition, as discussed subsequently with respect to the maintenance plan, WVDEP has committed to continue monitoring ambient PM_{2.5} concentrations in accordance with 40 CFR part 58. Thus, EPA is proposing to determine that the Martinsburg Area continues to attain the 1997 PM_{2.5} NAAQS.

Table 1. Design Values for the Martinsburg Area for the 1997 Annual PM_{2.5} NAAQS for 2008-2010, 2009-2011 and 2010-2012 Monitoring Periods, in µg/m³

Monitor ID	Annual Design Values		
	2008-2010	2009-2011	2010-2012
54-003-0003	12.9	11.8	11.6
24-043-0009	11.0	10.9	11.0

2. The Area Has Met All Applicable Requirements Under Section 110 and Subpart 1 of the CAA and has a Fully Approved SIP under Section 110(k) of the CAA

In accordance with section 107(d)(3)(E)(v) of the CAA, the SIP revisions for the 1997 annual PM_{2.5} NAAQS for the West Virginia portion of the Martinsburg Area must be fully approved under section 110(k) of the CAA and all the requirements applicable to the Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

a. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and

requirements set forth in section 110(a)(2) of the CAA include, but are not limited to the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a source permit program; provisions for the implementation of Part C requirements (PSD); (4) provisions for the implementation of Part D requirements for NSR permit programs; (5) provisions for air pollution modeling; and (6) provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO_x SIP Call (63 FR 57356, October 27, 1998), amendments to the NO_x SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and CAIR (70 FR 25162, May 12, 2005). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements of the CAA not connected

with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Martinsburg Area will still be subject to these requirements after it is redesignated. EPA concludes that section 110(a)(2) of the CAA and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that section 110(a)(2) elements of the CAA not linked in the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation (66 FR 53099, October 19, 2001).

EPA has reviewed the West Virginia SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of West Virginia's SIP addressing section 110(a)(2) requirements, including provisions addressing PM_{2.5}. *See* (76 FR 47062, August 4, 2011). These requirements are, however, statewide requirements that are not linked to the PM_{2.5} nonattainment status of the Martinsburg Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of West Virginia's PM_{2.5} redesignation request.

b. Subpart 4 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to PM_{2.5} nonattainment areas. Under section 172 of the CAA, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements.

The General Preamble for Implementation of Title I discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. *See* 57 FR 13498 (April 16, 1992).

As noted previously, EPA has determined that the Martinsburg Area has attained the 1997 annual PM_{2.5} NAAQS. Pursuant to 40 CFR 51.2004(c), the requirement for West Virginia to submit for the West Virginia portion of the Martinsburg Area an attainment demonstration and associated RACM, an RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual PM_{2.5} NAAQS are suspended until the Area is redesignated to attainment for the standard, or EPA determines that the Area again violated the standard, at which time such plans are required to be submitted. Since the Area has reached attainment for the 1997 annual PM_{2.5} NAAQS and continues to attain the standard, no additional measures are needed to provide for attainment. Therefore, the requirements of sections 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) of the CAA are no longer considered to be applicable for purposes of redesignation of the Area for the 1997 annual PM_{2.5} NAAQS .

Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As a result of EPA's determination of attainment of the Area for the 1997 annual PM_{2.5} NAAQS, in which certain planning requirements were suspended for the standard, the only remaining requirement under section 172 of the CAA to be considered for purposes of redesignation of the Area is the comprehensive emissions inventory required under section 172(c)(3) of the CAA. As part of West Virginia's August 5, 2013 submittal, the State submitted a 2007 base year emissions inventory for the West Virginia portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS which includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources and on-road mobile sources. The pollutants that comprise the inventory are NO_x, VOCs, PM_{2.5}, NH₃, and SO₂.

In this rulemaking action, EPA is proposing to approve West Virginia's 2007 base year emissions inventory in accordance with section 172(c)(3) of the CAA. Final approval of the 2007 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA. For more information on the evaluation and EPA's analysis of the 2007 base year emissions inventory, *see* Appendix B of the State submittal and the emissions inventory technical support document (TSD) dated January 14, 2014, available on line at www.regulations.gov, Docket ID No. EPA-OAR-R03-2013-0690. A summary of the 2007 base year emissions inventory is shown in Table 2.

Table 2. Summary of the 2007 Base Year Emissions Inventory, Berkeley County, West Virginia in Tons Per Year (tpy)

	SO ₂	NO _x	PM _{2.5}	VOC	NH ₃
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Point	1,444	1,967	277	231	91
Area	300	121	677	1,386	173
Locomotive & Marine (LM)	34	943	32	63	0.42
Nonroad	26	437	41	389	0.41
Fire	0.02	0.07	0.22	0.13	0.01
Onroad	30	5,005	176	1,378	52
Total	2,462	8,473	1,154	3,447	317

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) of the CAA requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, “Part D NSR Requirements for Areas Requesting Redesignation to Attainment.” Nevertheless, West Virginia currently has an approved NSR program, codified in 45 CSR 19. *See* 71 FR 64468 (November 2, 2006) (approving NSR program into the SIP). *See also* 77 FR 63736 (October 17, 2012) (approving revisions to West Virginia’s PSD program). However, West Virginia’s PSD program for the 1997 annual PM_{2.5} NAAQS will become effective in the Martinsburg Area upon redesignation to attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section

110(a)(2) of the CAA. As noted previously, EPA believes the West Virginia SIP meets the requirements of section 110(a)(2) of the CAA that are applicable for purposes of redesignation.

Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area “for at least 10 years after the redesignation.” In conjunction with its request to redesignate the West Virginia portion of the Martinsburg Area to attainment status, West Virginia submitted SIP revisions to provide for maintenance of the 1997 annual PM_{2.5} NAAQS in the Area for at least 10 years after redesignation, throughout 2025. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plan for the West Virginia portion of the Martinsburg Area will ensure that the SIP for West Virginia meets the requirements of the CAA regarding maintenance of the 1997 annual PM_{2.5} NAAQS for the Area. EPA’s analysis of the maintenance plan is provided in section V.B. of today’s proposed rulemaking action.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA interprets

the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426, (6th Cir. 2001) (upholding this interpretation). *See also* 60 FR 62748 (December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS, EPA determines that the Area has met all applicable SIP requirements under part D of Title I of the CAA. EPA also determines that upon final approval of the 2007 comprehensive emissions inventory as proposed in this rulemaking action, the Martinsburg Area will also meet all applicable SIP requirements under part D of Title I of the CAA for purposes of redesignating the Area to attainment for the 1997 annual PM_{2.5} NAAQS .

c. The West Virginia Portion of the Martinsburg Area has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

For purposes of redesignation to attainment for the 1997 annual PM_{2.5} NAAQS, EPA has fully approved all applicable requirements of the West Virginia SIP for the Area in accordance with section 110(k) of the CAA. Upon final approval of the 2007 comprehensive emissions inventory proposed in this rulemaking action, EPA will have fully SIP-approved all applicable requirements of the West Virginia SIP for the Area for purposes of redesignation to attainment for the 1997 annual PM_{2.5} NAAQS in accordance with section 110(k) of the CAA.

3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.

In making this demonstration, West Virginia has calculated the change in emissions between 2005, one of the years used to designate the Area as nonattainment, and 2007, one of the years the Area monitored attainment as provided in Table 3. Sectors included in Table 3 are point, including airports; area; locomotive and marine (LM); nonroad; fire; and onroad. There are no EGUs located in Berkeley County. The reduction in emissions and the corresponding improvement in air quality from 2005 to 2007 in the Martinsburg Area can be attributed to a number of regulatory control measures that have been implemented in the Area and contributing areas in recent years. For more information on EPA's analysis of the 2005 and 2007 emissions inventory, see EPA's emissions inventory TSD dated January 14, 2014, available in the docket for this rulemaking action at www.regulations.gov. Docket ID No. EPA-OAR-RO3-2013-0690.

Table 3. Comparison of 2005 Nonattainment Year and 2007 Attainment Year Reductions in tpy in the Martinsburg Area

	Sector	2005	2007	Decrease
PM_{2.5}	Point	361	227	134
	Area	1,430	677	753
	LM	25	32	-7
	Nonroad	45	41	4
	Fire	0.00	0.22	-0.22
	Onroad	199	176	23
	Total	2,059	1,154	905
NOx	Point	3,402	1,967	1,435

	Area	636	121	515
	LM	849	943	-94
	Nonroad	469	437	32
	Fire	0.00	0.07	-0.07
	Onroad	5,520	5,005	515
	Total	10,875	8,473	2,402
SO₂	Point	1,978	1,444	534
	Area	575	300	275
	LM	51	34	17
	Nonroad	49	26	23
	Fire	0.00	0.02	-0.02
	Onroad	109	30	79
	Total	2,762	1,834	928
VOC	Point	298	231	67
	Area	2,505	1,386	1,119
	LM	52	63	-11
	Nonroad	404	389	15
	Fire	0.00	0.13	-0.13
	Onroad	1,473	1,378	95
	Total	4,732	3,447	1,285
NH₃	Point	67	91	-24
	Area	198	173	25
	LM	0.35	0.42	-0.07
	Nonroad	0.39	0.41	-0.02
	Fire	0.00	0.01	-0.01
	Onroad	52	52	0
	Total	318	317	1

a. Federal Measures Implemented

Reductions in PM_{2.5} precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. The Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards (Tier 2 Standards) have resulted in lower NO_x and SO₂ emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA

has estimated that, after phasing in the new requirements, new vehicles emit less NO_x in the following percentages: Passenger cars (light duty vehicles) – 77 percent; light duty trucks, minivans, and sports utility vehicles – 86 percent; and larger sports utility vehicles, vans, and heavier trucks – 69-95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced PM_{2.5} emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct PM_{2.5} emissions and a 95 percent reduction in NO_x emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

In May 2004, EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99 percent. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010.

As required by the CAA, EPA developed Maximum Available Control Technology (MACT)

Standards to regulate emissions of toxic air pollutants from a published list of industrial sources referred to as “source categories.” The list of MACT source categories that must meet control technology requirements to reduce the emission of toxic air pollutants with compliance dates on or after 2005, is found in the West Virginia’s August 5, 2013 submittal on page 48, available on line at www.regulations.gov, Docket ID No. EPA-OAR-R03-2013-0690.

b. State and Local Measures

EPA issued the NO_x SIP Call in 1998 pursuant to the CAA to require 22 states and the District of Columbia to reduce NO_x emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. *See* (63 FR 57356, October 27, 1998). EPA approved West Virginia’s Phase I NO_x SIP Call rule on May 10, 2002 (67 FR 31733) and Phase II rule on September 28, 2006 (71 FR 56881). Emission reductions resulting from regulations developed in response to the NO_x SIP Call are permanent and enforceable.

On March 10, 2005, EPA issued CAIR, which applies to 27 states and the District of Columbia. CAIR relied on 3 separate cap-and-trade programs to reduce SO₂ and NO_x emissions. On August 4, 2009 (74 FR 38536), EPA approved West Virginia’s CAIR rules into the West Virginia SIP. The maintenance plan for the Area for the 1997 annual PM_{2.5} NAAQS, thus, list CAIR as a control measure for the purpose of reducing SO₂ and NO_x emissions. On August 8, 2011 (76 FR 48208), EPA promulgated CSAPR to replace CAIR, which has been in place since 2005. The D.C. Circuit Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C.

Cir. 2008). On August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, and on June 24, 2013, the Supreme Court granted certiorari on EPA’s petition for appeal of *EME Homer City Generation*. See *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 570 U.S. --- (2013). Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

As noted earlier, EPA believes it is appropriate to allow states to rely on the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule, for purposes such as a redesignation. CAIR was in place and thus getting emission reductions when the Martinsburg Area monitored attainment of the 1997 annual PM_{2.5} NAAQS. The monitoring data used to demonstrate the Area’s attainment of the 1997 annual PM_{2.5} NAAQS was impacted by CAIR. EPA finds West Virginia appropriately included CAIR as a control measure in this SIP revision.

Furthermore, the air quality modeling analysis conducted for the Transport Rule demonstrates that the Area would be able to attain the 1997 annual PM_{2.5} NAAQS even in the absence of either CAIR or the Transport Rule. EPA’s modeling projections show that all ambient monitors in the Area are expected to continue to maintain compliance in the 2012 and 2014 “no CAIR” base cases. Therefore, none of the ambient monitoring sites in the Area are “receptors” that EPA projects will have future nonattainment problems or difficulty maintaining the NAAQS.

Based on the information summarized above, West Virginia has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions. The reductions result from Federal requirements, regulation of precursors under the NO_x SIP Call, and CAIR, which are expected to continue into the future.

B. Maintenance Plan

On August 5, 2013, WVDEP submitted a maintenance plan for the West Virginia portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plan is provided in this section.

1. Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. WVDEP developed emissions inventories for NO_x, PM_{2.5}, SO₂, VOC, and NH₃ for 2007, one of the years in the period during which the Martinsburg Area monitored attainment of the 1997 annual PM_{2.5} standard, as described previously.

WVDEP used the 2007 annual emissions inventory submitted to EPA's National Emissions Inventory (NEI) database to compile their inventory. There are no EGU's in Berkeley County. For the 2007 area source emissions, WDEP used the Southern Modeling, Analysis, and Planning (SEMAP) project.

For the 2007 nonroad mobile sources, WVDEP generated the emissions using EPA's

NONROAD model. The 2007 onroad mobile source inventory was developed using the most current version of EPA's highway mobile source emissions model MOVES2010a.

EPA has reviewed the documentation provided by WVDEP and found the emissions inventory to be acceptable. For more information on EPA's analysis of the 2007 emissions inventory, see Appendix B of the State submittal and the emissions inventory TSD dated January 14, 2014, available on line at www.regulations.gov, Docket ID No. EPA-OAR-R03-2013-0690.

2. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. *See* 1992 Calcagni Memorandum, pages 9-10.

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the maintenance demonstration need not be based on modeling. *See Wall v. EPA, supra; Sierra Club v. EPA, supra. See also* 66 FR 53099-53100; 68 FR 25430-32. WVDEP uses projection inventories to show that the Area will remain in attainment and developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of NO_x, SO₂, VOC, NH₃, and PM_{2.5} will remain at or below the attainment year 2007 emissions levels

throughout the Martinsburg Area through the year 2025.

The projection inventories for the 2017 and 2025 point, area, and nonroad sources were developed by the SEMAP contractors. Detailed discussion of how projections were developed are contained in the document “*SESARM Projection Year Final Report_Rev Jan 20 2013.pdf*.” Onroad mobile source projection inventories for Berkeley County were prepared by Michael Baker Jr., Inc. and onroad mobile source emissions for 2017 and 2025 were calculated from emission factors from MOVES2010 model runs. See Appendix C of the State submittal. EPA has reviewed the documentation provided by WVDEP and found the methodologies acceptable.

EPA has determined that the emissions inventories that the 2017 and 2025 projected emissions inventories provided by WVDEP are approvable. For more information on EPA’s analysis of the emissions inventory, see Appendix B of the State submittal and EPA’s TSD dated January 14, 2014, available on line at www.regulations.gov, Docket ID No. EPA-OAR-R03-2013-0690. Table 4 provides the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 maintenance plan end year for the Area.

Table 4. Comparison of 2007 attainment year and 2017 and 2025 projected emission estimates for the Martinsburg Area in tpy

	SO ₂	NO _x	PM _{2.5}	NH ₃	VOC
2007 (attainment)	9,016	19,254	2,455	1,522	8,109
2017 (interim)	7,629	12,086	2,188	1,485	5,668
2017 (projected decrease)	1,387	7,168	267	37	2,441
2025 (maintenance)	7,743	10,030	2,154	1,500	5,308
2025 (projected decrease)	1,273	9,224	301	23	2,802

Table 4 shows that between 2007 and 2017, the Area is projected to reduce SO₂ emissions by 1,387 tpy, NO_x emissions by 7,168 tpy, PM_{2.5} emissions by 267 tpy, NH₃ by 37 tpy, and VOC by 2,441 tpy. Between 2007 and 2025, the Area is projected to reduce SO₂ emissions by 1,273 tpy, NO_x emissions by 9,224 tpy, PM_{2.5} emissions by 301 tpy, NH₃ by 23 tpy, and VOC by 2,802 tpy. Thus, the projected emissions inventories show that the Area will continue to maintain the 1997 annual PM_{2.5} NAAQS during the 10 year maintenance period.

3. Monitoring Network

EPA has determined that West Virginia's maintenance plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. There are two PM_{2.5} monitors in the Martinsburg Area. One is located in West Virginia operated by the West Virginia Division of Air Quality, and the other one is located in Maryland operated by the Maryland Department of the Environment. In its August 5, 2013 submittal, West Virginia stated that it will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

4. Verification of Continued Attainment

To provide for tracking of the emission levels in the Area, WVDEP requires major point sources to submit air emissions information annually and prepares a new periodic inventory for all PM_{2.5} precursors every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR). EPA has determined that WVDEP will continue to compare emissions information to the attainment year inventory to assure continued attainment with the 1997 annual PM_{2.5}

NAAQS and that WVDEP will use this information to assess emissions trends, as necessary.

5. Contingency Measures

The contingency plan provisions for maintenance plans are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would “trigger” the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

West Virginia’s maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. West Virginia’s contingency measures include a warning level response and an action level response. An initial warning level response is triggered when the average weighted annual mean for a single calendar year exceeds $15.5 \mu\text{g}/\text{m}^3$ within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and implementation as for an action level response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

The action level response will be prompted by any one of the following: (1) A warning level response study that shows emissions increases; (2) a weighted annual mean over a two-year average that exceeds the standard; or (3) a violation of the standard in the maintenance area. If an action level response is triggered, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

West Virginia's candidate contingency measures include the following: (1) Diesel reduction emission strategies; (2) alternative fuels and diesel retrofit programs for fleet vehicle operations; (3) PM_{2.5}, SO₂, and NO_x emissions offsets for new and modified major sources; (4) concrete manufacturing controls; and (5) additional NO_x reductions. Additionally, West Virginia has identified a list of sources that could potentially be controlled. These include: Industrial, commercial and institutional (ICI) Boilers for SO₂ and NO_x controls, EGUs, process heaters, internal combustion engines, combustion turbines, other sources greater than 100 tpy, fleet vehicles, concrete manufacturers, and aggregate processing plants. EPA finds that the West Virginia maintenance plan for the Martinsburg Area includes appropriate contingency measures as necessary to ensure West Virginia will promptly correct any violation of the NAAQS that occurs after redesignation. For all of the reasons discussed above, EPA is proposing to approve West Virginia's 1997 annual PM_{2.5} maintenance plan for the Martinsburg Area as meeting the requirements of section 175A of the CAA.

C. Transportation Conformity

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to “conform to” the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR Part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in the SIP.

On August 5, 2013, West Virginia submitted a SIP revision that contains the 2017 and 2025 PM_{2.5} and NO_x onroad mobile source budgets for the Martinsburg Area that comprises Berkeley County, West Virginia. West Virginia did not provide emission budgets for SO₂, VOC, and NH₃ because it concluded, consistent with the presumptions regarding these precursors in the Transportation Conformity Rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the 1997 PM_{2.5} Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area’s PM_{2.5} air quality problem. EPA issued conformity regulations to implement the 1997 annual PM_{2.5} NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005). Those actions were not part of the final rule recently remanded to EPA by the D.C. Circuit Court in *NRDC v. EPA*, No. 08–1250 (January 4, 2013), in which the D.C. Circuit Court remanded to

EPA the 1997 PM_{2.5} Implementation Rule because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the MVEBs for the Martinsburg Area. The MVEBs are presented in Table 5.

Table 5. MVEBs for Berkeley County, West Virginia for the 1997 PM_{2.5} NAAQS in tpy

Year	PM _{2.5}	NO _x
2017	83	2,621
2015	50	1,660

EPA's substantive criteria for determining adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve the MVEBs, EPA must complete a thorough review of the SIP, in this case the PM_{2.5} maintenance plan, and conclude that with the projected level of motor vehicle and all other emissions, the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual PM_{2.5} NAAQS.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA taking action on the MVEB.

On December 20, 2013, EPA initiated an adequacy review of the MVEBs for the 1997 annual PM_{2.5} NAAQS that West Virginia included in its redesignation request submittal. As such, a notice of the submission of these MVEBs were posted on the adequacy

website (<http://www.epa.gov/otaq/stateresources/transconf/currships.htm>). The public comment period closed on January 21, 2014. There were no public comments received. EPA is acting on making the adequacy finding final through a separate notice of adequacy. EPA has reviewed the MVEBs and found them consistent with the maintenance plan and that the budgets meet the criteria for adequacy and approval. Therefore, EPA is proposing to approve the 2017 and 2025 PM_{2.5} and NO_x MVEBs for Berkeley County for transportation conformity purposes. Additional information pertaining to the review of the MVEBs can be found in the TSD dated January 28, 2014, available on line at www.regulations.gov, Docket ID No. EPA-R03-OAR-2013-0690.

VI. Proposed Actions

EPA is proposing to approve the redesignation of the West Virginia portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. EPA has evaluated West Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the Martinsburg Area has attained the 1997 annual PM_{2.5} NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the West Virginia portion of the Martinsburg Area from nonattainment to attainment for the 1997 PM_{2.5} annual NAAQS. EPA is also proposing to approve the associated maintenance plan for the Area submitted on August 5, 2013, as a revision to the West Virginia SIP because it meets the requirements of section 175A of the CAA as described previously in this rulemaking notice. In addition, EPA is proposing to approve the 2007 base year emissions inventory as meeting the

requirement of section 172(a)(3) of the CAA. Furthermore, EPA is proposing to approve the 2017 and 2025 PM_{2.5} and NO_x MVEBs submitted by West Virginia for Berkeley County for transportation purposes. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule proposing to approve West Virginia's redesignation request, maintenance plan, 2007 base year emissions inventory, and MVEBs for transportation conformity purposes for the West Virginia portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, PM_{2.5}, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides

40 CFR Part 81

Air pollution control, National parks, Wilderness areas

Authority: 42 U.S.C. 7401 et seq.

Dated: April 16, 2014.

W. C. Early,
Acting Regional Administrator,

Region III.

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